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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

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9 EMERY SLAYDEN, Case No. 2:06-cv-00664-APG-CWH
10 v. Petitioner,
11 E.K. McDANIEL, et al.,
12 Respondents.
13

ORDER

14 On March 13, 2009, this court denied petitioner Emery Slayden's 28 U.S.C. §
15 2254 habeas corpus petition, and judgment was entered on March 16, 2009 (ECF Nos.
16 21, 22). On February 21, 2017, Slayden filed what he styled a motion to supplement
17 petition (ECF No. 37). This court denied the motion (ECF No. 39). Slayden has now
18 filed a motion to compel disclosure and for an extension of time (docketed as two
19 motions at ECF Nos. 40 and 41). These motions shall also be denied.

20 As the court explained previously, Slayden's petition has already been
21 adjudicated on the merits. He seeks to challenge the same judgment of conviction. 28
22 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application permitted by
23 this section is filed in the district court, the applicant shall move in the appropriate court
24 of appeals for an order authorizing the district court to consider the application.” Where
25 a petition has been dismissed with prejudice as untimely or because of procedural
default, the dismissal constitutes a disposition on the merits and renders a subsequent
27 petition second or successive for purposes of 28 U.S.C. § 2244. *McNabb v. Yates*, 576

1 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th
2 Cir. 2005).

3 In the current motion, Slayden states that he needs another copy of a letter that
4 his former girlfriend wrote at the time of his arrest that he claims is exculpatory because
5 he “g[ave] the last copy out to an old friend” (ECF No. 40, p. 2). Slayden also states
6 that the letter was a part of the record in his state habeas case. Here he again attempts
7 to challenge the same judgment of conviction, and as he was previously advised, he
8 must seek and obtain leave of the appeals court to pursue a successive petition. See
9 28 U.S.C. § 2244(b)(3) et seq. Accordingly, Slayden’s motion is denied.

10 **IT IS THEREFORE ORDERED** that petitioner’s motion for order compelling
11 disclosure or discovery and sanctions (ECF No. 40) and motion for extension of time to
12 complete discovery (ECF No. 41) are both **DENIED**.

13 DATED: 10 May 2017.



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15 ANDREW P. GORDON
16 UNITED STATES DISTRICT JUDGE
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